

CHAPTER 51.

BACKGROUND CHECKS FOR LICENSED CHILD DAY CENTERS.

22 VAC 15-51-10. Defining words and phrases.

The following words and terms have these meanings when used in reference to this regulation:

"Agent" means a person who acts on behalf of, or is an employee or volunteer with, a licensed child day center.

"Applicant" means the person or persons applying for licensure as a child day center. In the case of a sole proprietorship, the applicant is the individual owner. In the case of partnership, corporation, limited liability company, public agency or similar entity, the applicant must designate at least one individual who must comply with the applicant's obligation on its behalf and must include all individuals who will be on site exercising direction over the operation.

"Background checks" means a sworn statement or affirmation, a criminal history record report, and a child protective services central registry check.

"Barrier crime" means a conviction identified at § 63.2-1719 of the Code of Virginia. The convictions, and Code of Virginia references, are murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.), malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assault and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.), robbery as set out in § 18.2-58, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1

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(§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive by shooting as set out in § 18.2-286.1, or an equivalent offense in another state.

"Center" means licensed child day center.

"Central Criminal Records Exchange" means the information system containing conviction data of crimes committed in Virginia. The system is maintained by the Department of State Police.

"Central registry" means the record of founded complaints of child abuse and neglect maintained by the Department of Social Services.

"Central registry finding" means the record of founded complaints of child abuse and neglect for an individual.

"Commissioner" means the Commissioner of the Virginia Department of Social Services or his designee.

"Contract agency" means an entity with which the center or a parent has an agreement to provide services to a child or children while attending the center.

"Contract employee" means a person with whom the center or a parent has an agreement to provide services to a child or children while attending the center.

"Criminal history record check" means the process the Department of State Police uses to generate a criminal record report on a person.

"Criminal history record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The report identifies convictions within the Commonwealth.

"Department" means the Department of Social Services.

"Department representative" means an employee of the department who carries out regulatory duties.

"Disqualifying background" means (i) having been the subject of a founded complaint of child abuse or neglect even if his record has been purged from the Child Abuse and Neglect Central Registry system, (ii) a barrier crime conviction, or (iii) any other felony not included in the definition of "barrier crime," unless five years have elapsed since the conviction. For the purpose of this regulation, no person is considered to be the subject of a founded complaint of child abuse or neglect until a decision upholding the finding has been rendered by the hearing officer after the administrative hearing, provided the person complies with the requirements for requesting an administrative hearing. No

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person is considered to be the subject of a founded complaint of child abuse or neglect if the child abuse or neglect finding is overturned by an administrative hearing or a subsequent court decision.

"Employee" means a person hired by a center or with whom the center has an employment agreement.

"Involved in the day-to-day operations" means (i) in a supervisory or management position, making daily decisions regarding the operation of the center, (ii) counted by the center for purposes of staff-to-children ratios or (iii) has or will have access to child and family records except those individuals who are operating under authority of a court order.

"Licensed" means having met the requirements of and obtained licensure through the Department of Social Services as required in General Procedures and Information for Licensure (22 VAC 40-80).

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Local agency" means local department of social services.

"May" means has permission.

"Must" means the action is a requirement.

"Must not" means the action is prohibited.

"Other felony" means conviction for any felony in the last five years that is not a barrier crime felony.

"Parent volunteer" means someone supervising, without pay, a group of children that includes the parent volunteer's own child in a program that operates no more than four hours per day, provided that the parent volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.2-1720 or § 63.2-1724 of the Code of Virginia.

"Search of central registry" means the process the Virginia Department of Social Services' Child Protective Services Unit uses to generate a central registry report on a person.

"Sworn statement or affirmation" means a statement completed by a person attesting to whether he has ever been (i) convicted of or the subject of pending charges of any crime within or outside the Commonwealth or equivalent offense outside the

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Commonwealth or (ii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth.

"Volunteer" means a person who provides services without pay and who is alone with a child or children in performance of his duties.

22 VAC 15-51-20. Describing background checks.

The background checks covered by this regulation are:

1. Sworn statement or affirmation;
2. Criminal history record check; and
3. Central registry search.

22 VAC 15-51-30. Identifying who is not covered by this regulation.

All child welfare agencies that are not licensed child day centers are not covered by this regulation. Requirements for these facilities are at 22 VAC 40-191.

22 VAC 15-51-40. Identifying who is covered by this regulation.

A. This regulation applies to centers.

B. Background checks are required at the time of initial application.
These background checks are required at the time of application for licensure:

Who	What	When
1. Any applicant; and any agent at the time of application who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation, search of central registry, and criminal history record check	Upon application for licensure as a center

2. Exception: Persons who have had background checks by the center are not required to obtain new checks when the initial application is due to:

- (a) A change in site location; or
- (b) The entity opening a new site location.

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C. Background checks are required after the initial licensure.

Who	What	When
1. New person without current background checks designated as applicant, licensee, or agent who is or will be involved in the day-to-day operations of the center or who is or will be alone with, in control of, or supervising one or more of the children	Sworn statement or affirmation Search of central registry and criminal history record check	Whenever an applicant, licensee, or agent changes Before the end of 30 days after the change
2. Any employee of a center who is involved in the day-to-day operations or who is alone with, in control of, or supervising one or more children	Sworn statement or affirmation Search of central registry and criminal history record check	Prior to first day of employment at the center Before 30 days of employment at the center ends
3. Volunteer at a center who is or will be alone with any child in the performance of duties, excluding a parent volunteer for children attending a center	Sworn statement or affirmation Search of central registry and criminal history record check	Prior to first day of service at the center in this capacity Before 30 days of service at the center in this capacity elapses
4. Any applicant, licensee, agent, employee, and volunteer who is required to have background checks	Sworn statement or affirmation, search of central registry and criminal history record check	Before three years since the date of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report
5. Any individual who has or will have access to child and family records except those individuals operating under authority of a court order	Sworn statement or affirmation, search of central registry and criminal history record check	Prior to having access to child and family records and before three years since the date of the last sworn statement or affirmation, most recent central registry finding, and most recent criminal history record check report

6. Persons with most recent checks before 1990 must have repeat checks by the end of December of the year in which the regulation becomes effective. It is the end of December of the following year for those with most recent checks from 1991

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through 1995. It is at the end of December of the third year for those with most recent checks from 1996 through 2002.

D. Background checks are required for independent contract employees and employees hired by a contract agency.

If a center uses independent contract employees or contract employees hired by a contract agency who will be involved in the day-to-day operations of the center or who will be alone with, in control of, or supervising one or more children, the center must:

1. Obtain background checks according to the above requirements for employees or view the original required background checks maintained by the contract employee or contract agency;
2. Accept all satisfactory background checks dated less than six months before independent contract employees or contract employees hired by contract agencies begin providing services at the center; and
3. Make copies, and keep them at the center. Staff must write on the copies of the criminal record reports that they are photocopies of originals that center staff verified.
4. Provide a sworn statement or affirmation, central registry finding and criminal history record check report before three years since the dates of the last sworn statement or affirmation, most recent central registry finding and most recent criminal history record check report.

E. A center must not accept a required criminal history record report or a central registry finding from an applicant, licensee, or other person required to obtain background checks that is dated more than 90 days prior to the date of application, employment, or volunteering.

1. A center must not accept a copy of a sworn statement or affirmation.
2. Exception: See provisions for contracting agencies at 22 VAC 15-51-40 D 3.

F. The department must not accept a required criminal history record report or a central registry finding from an applicant or licensee that is dated more than 90 days prior to the date of licensure, or from the date when the person who is designated as the applicant or licensee changes.

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VAC 15-51-50. Explaining requirements for satisfactory background checks.

A. The department must require documentation of satisfactory background checks for applicants, agents, employees, and volunteers. Background checks information must be made available to department representatives upon request. A satisfactory sworn statement or affirmation is a fully completed original that states that:

1. The person does not have a criminal conviction that is a barrier crime or is any felony conviction within the last five years;
2. The person is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; and
3. There is no other knowledge that the individual has an unsatisfactory background. Criminal convictions include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would be a felony if committed by an adult within or outside the Commonwealth. Convictions also include convictions in other states that are equivalent to the barrier crimes set out in this regulation.

A satisfactory central registry finding is one in which:

1. A copy of the department's child protective services check form is returned to the center indicating that, as of the date on the reply, the individual whose name was searched is not identified in the Central Registry of Founded Child Abuse/Neglect Investigations as an involved caregiver with a founded disposition of child abuse/neglect, and
2. There is no other knowledge that the individual has a founded disposition in Virginia or elsewhere.

A satisfactory criminal history record check report is one in which:

1. An original hard copy or Internet inquiry reply from the Department of State Police is returned to the center with no convictions indicated, or convictions indicated, but no barrier crimes or other felony convictions in the last five years, and
2. There is no other knowledge that the individual has a barrier crime, or other felony conviction in the past five years, in Virginia or elsewhere.

B. Background checks results are not open-ended.

1. If a person leaves a center and the criminal history record report or central registry

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check finding is less than 91 days old, the person must be permitted to take the report or reports with him.

2. The center must keep a copy of any report a person takes and write on it that it is a copy, and that the original of any criminal history record report was verified.

3. Unless there is a criminal conviction or a founded complaint of child abuse and neglect during that period, a background check remains valid at a center if no more than 12 consecutive months have passed from when a person:

- a. Began a leave of absence from that center;
- b. Was terminated from employment at that center; or
- c. Was transferred to a center owned and operated by the same employer or entity.

4. If there is reason to suspect that a person who has submitted acceptable background checks, as required by this regulation, has a disqualifying background, the center or the department may require new background checks relevant to this suspicion.

5. When the center or the department chooses to require a new background check, the center or the department:

- a. May allow the person to continue the same relationship with the center until the center or the department receives the new Virginia background check information or equivalent documentation from another state, or
- b. Must require that the person not be alone with children, even if the documentation is not Virginia background check information or equivalent information from another state.

C. Waivers of some criminal convictions are possible. Refer to 22 VAC 40-191-90 through 22 VAC 40-191-130 of Background Checks for Child Welfare Agencies for an explanation of the waiver.

22 VAC 15-51-60. Explaining consequences of unsatisfactory background checks results.

A. Applicants are denied licensure when there are unsatisfactory background checks results for:

- 1. Applicants as a center; or

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2. Agents at the time of application who are or will be involved in the day-to-day operations of the center or who are or will be alone with, in control of, or supervising one or more of the children.

B. An employee or volunteer of a center must not be employed or provide staff volunteer service until the center has the person's completed sworn statement or affirmation. Any person making a materially false statement regarding any offense shall be guilty of a Class 1 misdemeanor pursuant to §§ 63.2-1720 and 63.2-1721 of the Code of Virginia.

C. An employee or volunteer of a center must be denied continued employment or staff volunteer service if:

1. The center does not have an original criminal history record report within 30 days of employment or volunteer service; or

2. The center does not have a central registry finding within 30 days of employment or volunteer service.

D. No violation shall occur and an employee may continue to work or provide volunteer service in a center if the center has documentation that the criminal history record request, or the request for search of the central registry was submitted within seven calendar days of the person being employed or being a volunteer, but the report is not returned within 30 calendar days.

1. If a requested report was sent within seven calendar days but was not returned within 30 calendar days, the requestor must contact within four working days:

a. The Central Criminal Records Exchange of the Department of State Police; or

b. The Child Protective Services Unit of the department.

2. If the request was not received, the requestor must submit another request within five working days after the contact.

E. If the department or a local agency becomes aware that a person covered by this regulation has a disqualifying background, the department or local agency may release this information to centers. Those centers must not further disseminate this information.

F. Centers must inform compensated employees and volunteers that the centers are requesting child protective services registry checks and criminal history record reports for them.

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G. A center may choose to request a national criminal background check instead of the criminal history record check for employees and volunteers. The center must adhere to Department of State Police requirements for obtaining fingerprints in accordance with § 19.2-392.02 of the Code of Virginia.

1. The department will accept a national criminal background check result of "qualified" from the Department of State Police.
2. If the screening result is "disqualified," the center must obtain a satisfactory criminal history record check from the Central Criminal Record Exchange for the person if:
 - a. The center wishes to employ the person or approve the person as a volunteer; or
 - b. The center wishes the department to issue a license.

H. The center may also require a background check from another state per the provisions in 22 VAC 15-51-50 B 3.

I. A center that does not comply with this regulation may have its license revoked or denied. If a center has knowledge that a person required to have a background check has an offense, this person does not have a waiver, and if the center refuses to separate the person from employment or service, its license must be revoked or denied.

22 VAC 15-51-70. Keeping background checks records.

A. A center must keep background checks reports and findings at the location where the person is an applicant, agent, employee, contract employee, volunteer, or is any other adult who is involved in the day-to-day operations of the center or who is alone with, in control of, or supervising one or more children.

1. If a center is among two or more owned by the same entity, the background checks reports and findings may be kept at corporate headquarters or at the center, and must be made available to the department representative upon request.
2. If a center is not the primary work place for a person, the center may keep copies on site, if there:
 - a. Is documentation of the place where original background check records are kept; and
 - b. Are copies of the sworn statement or affirmation, criminal history record report with a statement that the facility designee has viewed and verified the original, and

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the original or a copy of the child protective services central registry finding.

B. Centers must keep all background check information for two years after a person required to provide background checks terminates his duties with a center.

C. Background checks information must be stored in locked files. Applicants, agents, and their designees are the only center staff who may have access to these documents.

D. If a center is denied licensure because of background checks information, the center must provide a copy of the documentation to the disqualified person.

E. If a person is denied employment or volunteer service because of background checks information, the center must provide a copy of the documentation to the person.

F. A center must also release a copy of the information when the subject of the information requests it.

G. Further dissemination of the background check information is prohibited other than to the commissioner's representative or a federal or state authority or court in order to comply with an express requirement in the law for that dissemination. Note – See the provisions at 22 VAC 15-51-60 E.

22 VAC 15-51-80. Describing the waiver of criminal conviction.

The waiver of criminal conviction is the department's canceling the consequences of an unsatisfactory criminal history record check only for specific convictions. Waiver provisions are found in 22 VAC 40-191-90 through 22 VAC 40-191-150.